

N.D.A.G. Letter to Engelman (Jan. 7, 1985)

January 7, 1985

Mr. Jerald L. Engelman
Mayville City Attorney
P. O. Box 547
Mayville, North Dakota 58257-0547

Dear Mr. Engelman:

Thank you for your letter of December 18, 1984, requesting an opinion from this office as to whether an alderman sitting on the Mayville City Council is able to submit a subcontract bid on a water treatment plant proposed for construction within the city of Mayville. A member of my staff has spoken with you and has learned that Mayville has a population under 10,000, the water treatment plant does involve the construction of a building, and the cost of the proposed construction exceeds \$25,000.00.

As the city of Mayville does not have a population exceeding 10,000, Section 40-13-05 of the North Dakota Century Code, which prohibits a city council member from having any interest in a contract with the city unless that contract is unanimously approved by the other members of the council, does not apply. As the construction of the Mayville water treatment plant does involve the construction of a building exceeding the cost of \$25,000.00, Section 48-02-12, N.D.C.C., does apply. That statute states as follows:

48-02-12. OFFICERS MUST NOT BE INTERESTED IN CONTRACT.--No governing board, nor any member, employee, or appointee thereof, shall be pecuniarily interested or concerned directly or indirectly in any public contract, either verbal or written, that may be entered into by any such board or officer.

Therefore, it is my opinion that Section 48-02-12, N.D.C.C., is applicable to the factual situation described in your letter. As such, members of the Mayville City Council are not able to become monetarily interested in the construction of the city water treatment plant regardless of whether the other members of the governing body are willing to unanimously approve his involvement.

For your further information, I have enclosed a letter that was written to the Ellendale city attorney on a similar question on April 13, 1983.

Sincerely,

Nicholas J. Spaeth

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Enclosure